IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of Case

Criminal (Jail) Appeal No. 1835/2001 **Decided on: August 14, 2006**

A.F.R. (Approved for Reporting)
Not approved for reporting

Date. 14.08.2006

(Initials of Judge)

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgement

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal (Jail) Appeal No. 1835 of 2001

Prem Singh Bisht
S/o Sri Lachham Singh
R/o Village Syalkham,
Patti Bijlaut,
District Pauri Garhwal.

…… Appellant

Versus

The State ……. Respondent

Mr. Lokendra Dobhal, Advocates for the appellant
Mr. D.K. Sharma, Government Advocate with Mr. H.C. Pande, Addl. Government Advocate for the respondent-State.

Coram : Hon'ble B.C. Kandpal, J.
Hon'ble Prafulla C. Pant, J.

Dt: August 14th , 2006.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 10.10.2001, passed in Sessions Trial No. 15 of 2000, by the then learned Sessions Judge, Pauri Garhwal, whereby accused / appellant Prem Singh Bisht has been convicted under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.), and sentenced to imprisonment for life.

2) We heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that on 21.01.2000, at about 12:00 noon, in Village Goom, Patti Bijlaut-II, Tehsil Dhumakot, District Pauri Garhwal, deceased Kamla Devi was busy in cutting green leaves from the trees for her cattle when she was attacked by accused / appellant Prem Singh Bisht, who throttled her. P.W.1 Smt. Chandrawati Devi and P.W.2 Smt. Sarojini Devi, whoi were at some distance heard shrieks of Kamla Devi and saw that the accused / appellant Prem Singh Bisht is throttling Kamla Devi. When the two witnesses rushed towards Kamla Devi, accused / appellant Prem Singh Bisht ran away from the scene of occurrence. Kamla Devi died on the spot. P.W. 4 Satish Chandar Kala (informant), son of the deceased, received information about death of his mother in his office and rushed to his Village. He lodged the First Information Report (Ext. A -1) of the incident, on the very day i.e. 21.01.2000, at about 6:30 P.M., With Patti Patwari Bijlaut –II of Tehsil Dhumakot. (In Uttaranchal hills, in certain areas, revenue officers are given police powers by the State). P.W. 6 Kailash Ravi, Patwari of Bijlaut -II, on receiving the First Information Report (Ext. A -1), Registered the case as crime No. 01 of 2000 under Section 302 of the I.P.C. against accused / appellant Prem Singh Bisht and prepared check report (Ext. A -4) and made necessary entry in the general diary (a copy of which is Ext. A -5.). He started the investigation of the crime. P.W. 6 Kailash Ravi, Patwari went to the Village Goom next morning, and took the dead body of Kamla Devi in his

possession and prepared inquest report (Ext. A -2). He further prepared site plant (Ext. A -6), apart from preparing letter (Ext. A -7) to the Chief Medical Officer, requesting him for postmortem examination of the dead body; sample seal (Ext. A -8); sketch of the dead body (Ext. A -9) and police form No. 13 (Ext. A -10). The dead body was sent for postmortem examination . P.W. 5 Dr. V.P. Narsaria conducted the autopsy on the dead body of Kamla devi on 23.01.2000, at about 10:15 A.M., and prepared the postmortem examination report (Ext. A -3). According to the Medical Officer, who conducted the postmortem examination, the cause of death of the deceased was asphyxia due to throttling. The Investigating Officer, after recording the statement of the witnesses and completing the investigation, submitted the charge sheet (Ext. A -11) against accused Prem Singh Bisht, before the Chief Judicial Magistrate, Pauri Garhwal.

4) The Magistrate concerned, on receipt of the charge sheet, it appears, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions for trail. Learned sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of I.P.C. against accused Prem Singh Bisht on 08.06.2000 and amended charge on 30.11.2000. Accused Prem Singh Bisht pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Chandrawati Devi (eyewitness); P.W. 2 Sarojini Devi (another eyewitness); P.W. 3 Mahipal Singh (a teacher, who has)

stated that on 21.01.2000, accused Prem Singh Bisht met him and left Village Naikhana around 11:15 A.M.); P.W. 4 Satish Chandra Kala (informant and son of the deceased); P.W.5 Dr. V.P. Narsaria, (who conducted the autopsy on the dead body of the deceased) and P.W. 6 Kailash Ravi (who investigated the crime). The entire oral and documentary evidence was put to the accused under Section 313 of Cr.P.C. regarding which in his reply, the accused alleged the evidence adduced against him to be wrong and he further stated that he has falsely been implicated in the case due to enmity. The learned trial court, after recording the evidence, hearing the parties found accused Prem Singh Bisht guilty of the offence punishable under Section 302 of the I.P.C. and, after hearing on sentence, sentenced him to imprisonment for life. Aggrieved by the said judgment and order dated 10.10.2001, passed by the trail court, this appeal has been preferred by the convict from jail.

5) Before further discussions, it is pertinent to mention here, the ante mortem injuries found on the dead body of Kamla Devi By P.W. 6 Dr. V.P. Narsaria. The postmortem examination report (Ext. A -3) read with the statement of Dr. V.P. Narsaria (P.W. 5) reveals following ante mortem injuries on the body of the deceased, at the time of autopsy:

1. ***0.5cm X 05 cm abrasion present at the left side of the upper lip.***
2. ***A bruise with abrasion on the right side of neck and obliquely directed multiple bruises on left side of the neck extending on the front and side of the neck under the chin in an area 18 cm X 3 cm. Hyoid bone fractured.***

On internal examination the Medical Officer found the membranes and brain congested. pleura and larynx were also found congested. lungs were also found congested. Peritoneum was also found congested. Faecal matter and gases were present in the large intestine. And in the small intestine semi digestive food material with gases was present. The Medical Officer, after postmortem examination, opined that death of Kamla Devi was caused by asphyxia due to throttling.

6) P.W. 1 Chandrawati Devi, an eye witness of the incident, stated that on 21.01.2000, Kamla Devi (deceased) left the village for cutting leaves, and ten minutes thereafter, she along with Sarojini Devi (P.W. 2)also left the village for cutting leaves. P.W.1 Chandrawati Devi further states that Kamla Devi was cutting leaves from the tree on her field and she (Chandrawati Devi) and Sarojini Devi (P.W. 2) climbed over nearby tree. Soon thereafter, they heard shrieks of Kamla Devi for help to save her life. This witness further states that she saw Prem Singh Bisht (accused / appellant) throttling Kamla Devi. When, P.W. 1 Chandrawati Devi along with Sarojini Devi (P.W. 2) started running towards the scene of occurrence, accused / appellant fled from the spot. The witnesses on reaching the spot touched Kamla Devi and found that she is dead. This witness further states that she informed about the incident in the village and got sent children for village to the son of the deceased to inform him about the incident.

7) P.W. 2 Sarojini Devi is another eyewitness of the incident. She has corroborated the entire prosecution story,

narrated by P. W. 1 Chandrawati Devi, that she along with Chandrawati Devi (P.W. 1) were cutting leaves and they heard shrieks of Kamla Devi (deceased), at about noon, and saw accused Prem Singh Bisht throttling her. This witness has further stated that she along with Chandrawati Devi ran towards the spot and accused Prem Singh fled from there. The evidence of these two witnesses is fully corroborated from the postmortem examination report (Ext. A -3). Apart from this, statement of P.W. 3 Mahipal Singh, who is head Master in the Primary School Naikhana was got recorded by prosecution, who stated that on 21.01.2000, at about 11:00 A.M., accused Prem Singh Bisht met him in the Primary School Naikhana and told him that he want a mutual transfer with him. This witness has further stated that Prem Singh Bisht, at that time, was Head Master in the Primary School Goom. P.W. 3 Mahipal Singh further stated that after fifteen minutes, at about 11:15 A.M., accused Prem Singh again came to him and wanted to handover his attendance register with the request that the same be sent to his school. On this, the witness states that he got annoyed with the accused for keeping the attendance register with him and not in the school, and returned the same. The witness (Mahipal Singh) lastly states that accused Prem Singh Bisht, thereafter, left Naikhana school. This witness in his cross-examination clarified that it takes twenty-five minutes to reach Goom from Naikhana. P.W. 4 Satish Chandra Kala, son of the deceased, has stated that on receiving information about the death of his mother through children of the village he went there and, thereafter, lodged the First Information Report (Ext. A -1) with Patti Patari Bijlaut –II.

8) From the statement of the eye witnesses discussed above read with the postmortem examination report and evidence adduced by the other prosecution witnesses, the charge of commission of murder of Kamla Devi by throttling her, is fully proved against the accused Prem Singh Bisht. And, we are in agreement with the finding recorded by the trail court in this regard.

9) On behalf of the appellant, it is argued that the story narrated by prosecution witnesses should not believed as no motive has been disclosed by the prosecution, for commission of murder of Kamla Devi by the appellant. Had it been a case of circumstantial evidence, the argument advanced on behalf of the appellant could have carried weight, but where there is direct eye witness account of the incident, it is not necessary fro the prosecution to establish the motive behind the commission of crime. The trail court has rightly observed in its judgment that cause for committing the crime is a matter which at times remains in the mind of the accused. And, in that situation, no witness can state what went through the mind of the accused. The eye witnesses have stated what they saw on the spot. Where evidence of eye witnesses is natural and trustworthy, mere nondisclosure of motive by the prosecution, does not create any reasonable doubt to shake the prosecution story.

10) Mr. Lokendra Dobhal, learned counsel for the appellant contended that there is delay in lodging the First Information Report and the prosecution story should not be believed as stated by the prosecution witnesses. We have examined this contention after going through the evidence

on record and found that the incident has taken place at about noon. P.W. 4 Satish Chandra Kala, son of the deceased, got information in his office at about 3:00 P.M., through the children of his village, where after, he immediately rushed to the place of occurrence, and thereafter, got written the First Information Report (Ext. A - 1) and lodged it with the Patti Patwari Bijlaut –II, at 6:30 P.M., in the same evening. What he has mentioned in the First Information Report is the same what has been disclosed to him by the eye witnesses. There is no enmity alleged against P.W. 1 Chandrawati Devi or P.W. 2 Sarojini Devi due to which it can be said that they had falsely implicated the accused. P.W. 1 Chandrawati Devi is wife of Shees Ram and P.W. 2 Sarojini Devi is wife of Man Singh. They did not appear to be related to each other. But they are resident of the same village Goom to which deceased Kamla Devi belonged. In the circumstances, the delay, if any, as explained by P.W. 4 Satish Chandra Kala is rightly accepted by the trail court.

11) Lastly, it is submitted on behlf of the appellant that Kamla Devi could have used ‘THAMALI’ (heavy sickle) to defend herself from getting throttled, and the prosecution story as such should not be believed. We are unable to accept this submission for the reason that it is nowhere found from the prosecution evidence that ‘THAMALI’ was still in the hand of Kamla Devi, at the time she was throttled. P.W. 6 kailash Ravi, the Investigating Officer in his cross-examination states that the green leaves and branches of Bheemal tree were lying under the tree when he reached on the spot. It is natural and fact of common knowledge that

after cutting the leaves and the branches of the tree, the sickle is thrown on the ground before one climbs down from the tree as it becomes easy with empty hands to get down from the tree. In the circumstance, in out opinion, the prosecution story cannot be doubted, on this ground.

12) For the reasons as discussed above, we do not see any error of law or that of fact or that of appreciation of evidence on the part of the trial court, in convicting the accused / appellant under Section 302 of the I.P.C. and sentencing him to imprisonment for life. Accordingly, the appeal is liable to be dismissed. The same is dismissed. The conviction and sentence awarded against the accused / appellant Prem Singh Bisht is maintained.

(Prafulla C. Pant, J.) **(B.C. Kandpal, J.)**

Dt. August 14th, 2006
H.Negi